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SUPREME COURT NO. 99301-7

NO. 81278-5-J

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Dependency of K.W., a Minor Child,

STATE OF WASHINGTON, DCYF,

Respondent,

v.

K.W.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Annette Messitt, Judge

MOTION FOR DISCRETIONARY FOR REVIEW

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A. PETITIONER AND COURT OF APPEALS DECISION

K.W., a seven-year-old dependent Black child,¹ seeks review of a Court of Appeals commissioner's ruling denying review of a trial court order refusing to return him to long-term relative caregivers and instead placing him with a white foster family. The commissioner's ruling is attached as Appendix A. A three-judge panel of the Court of Appeals subsequently denied K.W.'s motion to modify the ruling. App. B.

This Court should reverse the Court of Appeals and grant review of the trial court's decision under RAP 2.3(b)(2) and RAP 13.5(b)(2).²

B. ISSUES PRESENTED

1. After legally free, dependent K.W. was abruptly removed from his long-term relative caregiver, the trial court denied his motion to return home, in favor of placement with a white foster family. Did the trial

¹ K.W. was a legally free child when the trial court issued the orders in this case. K.W.'s mother's rights were restored by August 31, 2020 order. App. B to Motion to Modify Comm'r's Ruling. However, K.W. remains dependent. Thus, the case is not moot; the trial court still retains control over his placement. But, as discussed below, even if the case is considered moot, this Court should grant review.

² Under RAP 2.3(b)(2), discretionary review of a dependency court's placement decision is appropriate where the court "has committed probable error and the decision . . . substantially alters the status quo or substantially limits the freedom of a party to act[.]" Similarly, under RAP 13.5(b)(2), this Court's review of an interlocutory decision by the Court of Appeals is appropriate where that court "has committed probable error and the decision of [that court] substantially alters the status quo or substantially limits the freedom of a party to act[.]"

court commit probable error when it failed to recognize that placement with K.W.'s extended family caregivers was in his best interests?

2. Did the trial court commit probable error in rejecting the relative caregiver's home study on flawed grounds? Relatedly, is this Court's intervention required because the Department of Children, Youth, and Families has been unable to produce an unbiased home study?

3. Is review warranted because the trial court's order perpetuates the traumatization of the seven-year-old petitioner?

4. Is review appropriate even if the case is considered moot?

C. STATEMENT OF THE CASE

The legal issues in this case begin with the Department's misguided December 2019 removal of K.W. from his long-term relative caregiver, followed by entrenchment by the Department. But first, this Court will benefit from an explanation of K.W.'s and his family's history.

When K.W. filed a motion to return to his family, he was a legally free seven-year-old. CP 491, 493. His biological parents struggled with substance abuse and the Department became involved. CP 1-6 (dependency petition). But K.W. has a strong, bonded, and loving extended Black family. CP 691-95, 698-701, 922-37, 940-73 (declarations explaining family history, traditions, and support system).

As K.W.'s biological mother struggled, she placed the infant K.W. with his "grandmother" (maternal cousin) Merrion Beaver, who also goes by Cheryl. CP 677, 698. Beaver has been an early childhood educator at Wellspring Family Services for 19 years. CP 698, 1271. K.W. thrived in Beaver's care. E.g., CP 396 (Department of Children, Youth, and Families' Sept. 2018 court report regarding then-five-year old K.W.). K.W.'s maternal great-aunt Barbara Hobson, a military veteran and bus driver for King County Metro, assisted Beaver in providing care for K.W. CP 691-92, 882. So did Beaver's adult son, Kirkmoni Wilson, whose own child was of similar age and bonded to K.W. CP 947-48.

K.W.'s family hoped his biological mother would recover so that she could regain custody of K.W. They openly expressed this wish to the Department. In 2018, the mother was engaging in services. CP 264, 366. However, K.W.'s mother relapsed and, in March 2019, relinquished her rights to K.W. CP 418, 475-88. Plans were made for a relative by marriage to adopt K.W., but the plan fell through. CP 478, 502, 574, 1197.

Beaver had expressed interest in adopting K.W. in 2018. CP 418. But in early 2019, due to employment considerations, neither Beaver nor Hobson could commit to adopting K.W. Beaver had learned she needed a more advanced degree to retain her professional credentials, and Hobson (who lacked seniority) drove early morning routes. RP 80; see also CP 691-

93, 811, 1197 (Hobson); CP 808, 904 (Beaver). Nonetheless, the Department approved continued placement with Beaver. CP 447, 808.

Meanwhile, Beaver and K.W.'s extended family remained committed to K.W. Beaver cared for K.W. as she would her own child. E.g., CP 698-99. When K.W. had difficulties at school, Beaver, an educator, worked with staff. CP 906-07, 909-14, 1125-26. Meanwhile, the Department explored adoptive placements. Two families were identified. CP 688, 794, 797, 817, 864.

On December 6, 2019, a social worker texted Beaver while she was driving to Astoria, Oregon for a niece's graduation. CP 699. Beaver had made plans for her son to pick up K.W. at daycare. CP 698-99. Beaver planned to return that evening. CP 699, 713-14 (Dec. 2019 declarations); CP 904 (Feb. 13, 2020 declaration); see also CP 1155, 1160, 1165 (reply declaration attaching rental car receipt and employer's confirmation Beaver took a single day off from work). Because December 6 was a Friday, Beaver texted that she would reply to the social worker the following week. CP 699, 1158. The social worker demanded to know where K.W. was staying while Beaver was out of town, but Beaver did not immediately read the text because she was traveling. CP 699, 1156. But Beaver responded only two hours after the original text—before 5:00 p.m.—that she was already on her way back to the Seattle area. CP 699, 1164; see also CP 802

(text as attachment to social worker’s Dec. 23, 2019 declaration). Over the hours and days that followed, Beaver repeatedly reached out to the Department. CP 1157-58.

But it was too late. Rather than simply returning K.W. to his home, he was placed in respite care—with strangers—and then placed with a prospective adoptive family who ultimately rejected him. CP 671, 677.³

As events unfolded, the Department and Court-Appointed Special Advocate (CASA) continued to assert, despite contrary evidence, that Beaver had violated a safety plan by going to Astoria for six days. Unfortunately, the claim that Beaver would be gone six days—apparently the product of then six-year-old K.W.’s imagination—metastasized, invading nearly every pleading filed by the Department and CASA in this case. E.g. RP 17 (Department attorney and social worker’s assertion at Dec. 24, 2019 hearing); CP 718, first full paragraph (CASA’s Dec. 23, 2019 report); CP 796, first full paragraph (social worker’s Dec. 23, 2019 declaration); CP 1022, first partial paragraph (CASA’s Feb. 19, 2020 motion); CP 1026 (CASA’s Feb. 19, 2020 declaration, statement number 6, “[d]uring the six days when Ms. Beaver left [K.W.]”).

³ The removal appears to have violated the Department’s own policies, which seek to limit placement disruptions and to provide notice to relative caregivers before removal. See DCYF Policy 4620, “Placement Moves” (rev’d Oct. 1, 2019).

The Department and CASA allowed the mistruth to infect even a Harborview Foster Care Assessment (FCAP) report. See CP 1091 (third full paragraph repeats and compounds inaccuracies). It is unclear why they continued to rely on this assertion. E.g., CP 1022, 1026 (CASA's Feb. 2020 pleading and declaration).

Similarly, the Department and CASA continued to insist no relatives wished to adopt, even after sworn declarations to the contrary. E.g. CP 719 (CASA's Dec. 22, 2019 declaration); CP 745 (social worker's Dec. 24, 2019 declaration); CP 1022, first partial paragraph (CASA's Feb. 19, 2020 motion); CP 1029 (CASA's Feb. 19, 2020 declaration, statement 18).

K.W., represented by counsel, initially agreed to the first non-respite foster placement following removal. CP 671. However, that family decided it wanted him removed. CP 677, 688, 797, 1127.

On December 20, as the prospective adoptive placement was failing, K.W. filed a motion to return to Beaver's care and asked the court to shorten time. CP 677-80, 683-84, 686-89, 707-11. K.W. submitted extensive evidence supporting return to his longtime caregiver. CP 691-95, 698-701. Hobson informed the Department she was an adoption resource because her Metro driving schedule had improved due to seniority. CP 692, 1197.

K.W.'s behavior issues at school worsened. RP 23 (Dec. 24, 2019 hearing testimony); CP 719 (CASA's Dec. 23, 2019 report); CP 1091-92

(Harborview FCAP report, revealing exacerbation of behavior after removal). As Christmas 2019 approached, K.W. was only allowed a single, brief, in-office visit and a few short phone calls with family. RP 870, 883.

The hearing on K.W.'s motion was held on December 24, 2019. RP 7-46. After the parties' arguments, RP 7-41, the court ruled that the Department was authorized to place K.W. with alternative caregiver Hobson even without completion of a home study. The court ordered the Department to meet with Hobson to address any concerns the Department might have about contact with the biological parents. The Department was ordered to investigate and prioritize placements with relatives. However, the Department retained authority to place K.W. in non-relative foster care should relative placement not be possible. CP 814-15.

The Department then placed traumatized K.W. in his third foster placement since removal from Beaver. CP 677, 805, 817-18, 833, 905, 1100; see CP 834, final paragraph (CASA's Jan. 21, 2020 report, stating K.W.'s behavior was so problematic that new foster parents had to sit with him in class each day; he was falling behind academically).

Department representatives met with Hobson. The social worker and supervisor fixated on a past welfare check instigated by the mentally ill mother of Hobson's grandson. CP 856, 884-86. But Hobson, who was state licensed to provide health care to vulnerable adults, had passed several

background checks and had received a favorable home study a few years earlier related to her grandson's move from Arizona. CP 882, 885. Hobson had met with another Department employee who urged her to complete a more stringent foster parent home study. CP 886. As of late January 2020, Hobson had started foster parent training. CP 886.

In January 2020, as K.W.'s family was doing what the Department asked, the Department refused to let K.W. attend the Martin Luther King, Jr. Day march. CP 883. The holiday is important to K.W.'s family. CP 1271. When K.W. lived with Beaver, he attended every year starting when he was two years old. CP 883; see CP 892 (photo of beaming K.W.).

In February of 2020, still isolated from his extended family, K.W. filed a motion for permanent placement with Beaver or Hobson. CP 852-80; see also CP 1222-31 (K.W.'s reply). The motion highlighted the legislative preference for relative placement, the policy and research support for such, and the ongoing harm to K.W. CP 852-66. K.W. attached a forensic psychologist's report recommending relative placement. CP 869-72 (Dr. Cecchet report). The report made clear that stable and enduring family relationships are crucial in child development, even when parent-child relationships are severed. CP 870-71. Sudden loss of such family relationships is likely to lead to trauma and a host of negative behaviors. Kinship placement has clear benefits. CP 871.

K.W.'s motion also incorporated a study highlighting the myriad benefits of kinship placement. CP 957-85; Casey Family Programs, From Data to Practice: The Impact of Placement with Family on Safety, Permanency, and Well-Being (November 2018).⁴ That study emphasizes that kinship (including blood relative) placement has clear benefits, including increased likelihood of permanency and improved well-being. CP 964. Further, the Indian Child Welfare Act (ICWA), with its codification of preference for extended family placement, is the “gold standard” for youth and families in the child welfare system. CP 979, 980.

K.W. also presented additional declarations and responsive declarations debunking claims made by the Department and CASA, some of which are discussed above, regarding the circumstances of the December 6, 2019 removal and the Department's claims that the family was allowing unauthorized contact with K.W.'s mother. CP 882-902 (Hobson declaration); CP 903-16 (Beaver declaration); CP 1155-96 (Beaver reply declaration); CP 1197-1213 (Hobson reply declaration).

Meanwhile—because the Department will only authorize one Department home study at a time—Beaver completed an independent home study by a licensed independent social worker. CP 904, 1155, 1269-83.

⁴ <https://caseyfamilypro-wpengine.netdna-ssl.com/media/1896-CS-From-Data-to-Practice-2018.pdf> (accessed December 9, 2020).

The evaluator made recommendations to address the Department's concerns, but the study determined that Beaver was a suitable permanent placement for K.W. CP 1282-83. The evaluator also submitted a declaration clarifying that the evaluation met all requirements for a preplacement adoption home study report under RCW 26.33.190. CP 1328.

A hearing on K.W.'s motion was held on March 12, 2020. RP 46-91. The court denied K.W.'s motion to return home. RP 86-89. K.W. could not be placed with Beaver or Hobson until "fully vetted" by a Department-approved home study. CP 1364; see also RP 88-90.

K.W.'s attorney asked for clarification as to why the court was finding Beaver's home study inadequate. The court responded that the information Beaver provided to the evaluator was "not completely accurate" but declined to explain what information that might be. RP 90.

K.W. immediately moved for discretionary review. As he pursued relief in the Court of Appeals, he remained isolated from relatives, only allowed limited contact with them. E.g. CP 1452-54 (Beaver declaration outlining attempts to see K.W.); CP 1455-67 (K.W.'s cards for grandma).

A Court of Appeals commissioner denied review. Commissioner's Ruling (App. A). The commissioner's ruling asserts the trial court did not commit probable error because the March 2020 ruling demonstrated the court considered K.W.'s stability—K.W. had "apparently stabilized" in the

foster home. App. A at 3, first full paragraph and third full paragraphs. As for the ongoing effects of the trial court’s order—putting aside institutional bias and history with this family specifically—relief was inappropriate because K.W. could continue seeking placement with relatives. App. A at 4. A panel of judges denied K.W.’s motion to modify the ruling. App. B.

K.W. now asks this Court to accept review under RAP 13.5(b)(2).

D. REASONS THIS COURT SHOULD GRANT REVIEW

“‘[T]he magnitude of a legal wrong is no reason to perpetuate it.’”

In re Dependency of Z.J.G., 196 Wn.2d 152, 186, 471 P.3d 853 (2020)

(quoting McGirt v. Oklahoma, ____ U.S. ____, 140 S. Ct. 2452, 2480, 207

L. Ed. 2d 985 (2020)).

Forced family separation—of which the foster care system is the most recent iteration—is a relic of slavery, wherein the State used the courts to rip Black families apart and ignored their pleas of reunification. . . . [T]he State continues to seek to control the bodies of Black and Indigenous people and to remove their autonomy in school systems, health systems, carceral systems, and the foster care system.

Br. of Amici Curiae at 1-2 (citing Holden, Vanessa M., Slavery and America’s Legacy of Family Separation, African American Intellectual History Society (July 25, 2018)).⁵

⁵ The brief of amici curiae in this case, submitted by the American Civil Liberties Union of Washington, Washington Defender Association, NAACP Seattle King County, the Fred T. Korematsu Center for Law & Equality, and The Mockingbird Society, is attached as Appendix C.

1. **This Court should accept review and reverse the trial court because it failed to recognize that placement with family rather than strangers was in K.W.'s best interests.**

The trial court committed probable error in failing to honor the legislative preference for relative placement, as well as that court's own prior December 2019 ruling. The Court of Appeals perpetuated this error.

A trial court abuses its discretion in making a placement decision without considering all relevant factors. In re Dependency of A.C., 74 Wn. App. 271, 275, 279, 873 P.2d 535 (1994).

"[T]he family unit is a fundamental resource of American life which should be nurtured." RCW 13.34.020. The "family unit" deserving of the highest level of protection may be the child's long-term, bonded caregiver. In re Dependency of Ramquist, 52 Wn. App. 854, 862, 765 P.2d 30 (1988); cf. Moore v. City of E. Cleveland, Ohio, 431 U.S. 494, 502, 97 S. Ct. 1932, 52 L. Ed. 2d 531 (1977) (lead opinion) ("[History] does not require cutting off any protection of family rights at the first convenient, if arbitrary boundary, the boundary of the nuclear family.").

Dependent children "have the right to basic nurturing, including a safe, stable, and permanent home." In re Dependency of M.S.R., 174 Wn.2d 1, 17, 271 P.3d 234 (2012). The child's "best interests" are evaluated in determining placement. In re Dependency of J.B.S., 123 Wn.2d 1, 8-10, 863 P.2d 1344 (1993). The trial court should "carefully

evaluate” several factors including the “psychological and emotional bonds that exist” between the child and his family and the “the potential harm he would suffer if effectively severed from contact with these persons.” Id. One interest that should not be forgotten is “the child’s interest in his or her cultural identity as a member of a minority group.” Douglas R. Esten, Transracial Adoption and the Multiethnic Placement Act of 1994, 68 TEMP. L. REV. 1941, 1953 (1995). The trial court must also be mindful of the “legislative preference for placements that least disrupt a child’s attachments and sense of stability.”⁶ J.B.S., 123 Wn.2d at 12. While no single factor affecting a child’s well-being is dispositive, “continuity of established relationships is a key consideration.” Id. at 11; McDaniels v. Carlson, 108 Wn.2d 299, 312, 738 P.2d 254 (1987). Placement disruptions “can be harmful to children by denying them consistent and nurturing support.” RCW 74.13.310.

Scholars, legislators, and courts have long recognized the importance of familial bonds. M.S.R., 174 Wn.2d at 15 (“The importance

⁶ In the dispositional order context, RCW 13.34.130(6) states that “[p]lacement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court.” This is consistent with other statutory provisions that articulate a preference for relative placement. E.g., RCW 13.34.060 (“At shelter care, “priority placement for a child in shelter care, pending a court hearing, shall be with any person described in RCW 74.15.020(2)(a) or 13.34.130(1)(b).”); RCW 13.34.065(5)(b) (“If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b)[.]”).

of family and familiar relationships to a natural and healthy childhood seems well established.”) (citing RCW 13.34.130, .385)). “Child development experts widely stress the importance of stability and predictability in parent/child relationships, even where the parent figure is not the natural parent.” McDaniels, 108 Wn.2d at 310 (citing several scholarly articles); accord In re Welfare of Aschauer, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980) (“[C]ontinuity in the parent-child relationship, whether the parent figure be the natural parent or not, is increasingly recognized as a significant factor in a child’s normal development.”).

The trial court in December 2019 ordered that the relative placement be prioritized. CP 814-15. The dependency statutes, moreover, evince an unmistakable preference for relative placement. In addition to the preference for family placement that permeates child welfare statutes, study after study demonstrates that placement with relatives improves developmental, mental health, and permanency outcomes for children in the foster care system.

The facts before the trial court were the following: K.W., a Black child, was cared for by a devoted “grandma” for five years, with Department approval, a best-case scenario for a dependent child like K.W. The Department ripped K.W. from the only home he had ever known. K.W. and qualified family members begged for his return and presented in-family

adoption resources. The Department then hand-delivered K.W. into non-relative foster care—his third placement since removal—claiming it would be destabilizing to move the struggling, isolated K.W. back to his family.

The trial court gave its seal of approval to this unpardonable act. The trial court committed probable error in refusing to return K.W. to his family. This Court should grant review and reverse.

2. The trial court erred in rejecting long-term caregiver Beaver's home study without explanation. Considering this family's history with the Department and the Department's history of bias, review is warranted.

As stated above, a trial court abuses its discretion in making a placement decision without considering all relevant factors. A.C., 74 Wn. App. at 275. Thus, this Court should grant review because the trial court abused its discretion in rejecting K.W.'s long-term caregiver Beaver's valid, private home study and in refusing to explain why the study was being rejected. Events after the hearing further illustrate why the trial court's ruling was both legally invalid and troubling.

The trial court appeared skeptical of the private home study. But a private home study may have an advantage that a Department home study does not: A lack of entrenched bias. The Department's own leader recognizes the structural racism that has for years infected the Department:

Until we all feel the pain of these losses and our systems respond accordingly with just policies and practices that

protect the health and well-being of all communities, we communicate resoundingly that Black lives matter less.

This brutality is deeply rooted in American history and culture. Minneapolis City Council Vice President, Andrea Jenkins, said it perfectly when she declared racism as a public health emergency:

“Until we name this virus, the disease that has infected America for the past 400 years, we will never, ever resolve this issue. To those who say bringing up racism is racist in and of itself, I say to you, if you don’t call cancer what it is, you can never cure that disease.”

... Digging [out racism], root and branch, will require facing our complicity in creating current racialized outcomes, and a willingness to put in the personal and collective work to make change happen.

Our agency, as with many public institutions, has a long way to go to live into our commitment to advance racial equity and social justice.

- Black children are expelled from pre-k at rates vastly exceeding their white counterparts. This is 3- and 4-year-olds.
- *Racial disparities get worse at almost every level of the child welfare system, with Black and Indigenous children being removed from their families at much higher rates than their white counterparts. . . .*

We have to call this problem out and focus on our everyday actions that perpetuate it. We are starting with a shared framework and approach to taking responsibility for eliminating racial and ethnic disparities and disproportionate impacts on the Black, Indigenous and People of Color[.]

Message from Secretary Hunter: Advancing Racial Equity (June 4, 2020)

(emphasis added).

Unfortunately, this acknowledged structural bias reveals itself in the way the Department conducted itself in this case. In several pleadings, the Department and CASA misstated the record about K.W.'s initial removal from Beaver. The Department and CASA also misrepresented the family's willingness to adopt. Ms. Hobson told the Department she wanted to adopt K.W. days after his removal, but she received no response. CP 692.

Rejecting the private home study, but refusing to explain why, the court required a *Department* home study. While K.W. attempted to appeal the order, K.W.'s family followed a parallel track—bending over backwards to comply with the trial court's wishes. But Ms. Hobson's heart-wrenching June 19, 2020 declaration reveals the Department, over the course of half a year, engaged in several contortions to avoid approving a home study. CP 1411-14 (declaration attached as Appendix D); see also CP 1415-51 (attachments to declaration); CP 1481 (declaration establishing falsity of 11-year-old misconduct claim).

Hobson's declaration post-dates the hearing at issue in this case, but it reveals why the trial court's summary rejection of the private home study was particularly problematic. Although interlocutory review is disfavored, this is a case in which appellate court intervention is necessary.

3. The trial court's order perpetuates the traumatization of a dependent child, warranting appellate review.

Review is appropriate because the March 2020 trial court order refusing to return K.W. to his family alters the status quo and limits his freedom to act. RAP 2.3(b)(2); RAP 13.5(b)(2).

Discretionary review is appropriate when probable error has occurred and a trial court's order has effects outside a courtroom, such as when a litigant is ordered to do something that alters the status quo, or where the litigant is prevented from engaging in some desired act. State v. Howland, 180 Wn. App. 196, 207, 321 P.3d 303 (2014); see also In re Dependency of A.M., noted at 185 Wn. App. 1005, 2014 WL 7174508 (2014) (review was granted under RAP 2.3(b)(2) where trial court closed courtroom without making the necessary findings).

K.W.'s separation from his long-term caregivers created months of ongoing trauma and, notably, effects outside of the courtroom. E.g., RP 23 (Dec. 24, 2019 hearing testimony); CP 719 (CASA's Dec. 23, 2019 report); CP 1091-92 (Harborview FCAP report, revealing exacerbation of behavior issues after removal from Beaver); CP 1400 (CASA's June 8, 2020 report); CP 1479 (K.W. declaration asking for contact with family members). The trial court's March 2020 order perpetuated this traumatization. Review is warranted under the rules of appellate procedure.

4. Review is appropriate even if the issue is considered moot.

Finally, the dispute in this case is not moot. K.W. remains dependent and subject to placement decisions by the trial court. But review is appropriate even if this Court considers K.W.'s case to be moot.

“A case is moot if a court can no longer provide effective relief.” In re Marriage of Horner, 151 Wn.2d 884, 891, 93 P.3d 124 (2004). This Court will review a moot case if it presents issues of continuing and substantial public interest. Id. This Court considers whether the issues are public or private, whether an authoritative determination is desirable to provide future guidance to public officers, and whether the issues are likely to recur. Id. at 892. This Court also considers the likelihood the issue will escape review and the quality of the advocacy. Id.

As this Court recently observed in Z.J.G., which reviewed a trial court's shelter care determinations, the correct application of relevant statutes presented a dispute that was public in character. Z.J.G., 196 Wn.2d at 161, n. 7. Considering the nature of dependency proceedings, the issues were also likely to recur, yet evade review, making resolution of such issues desirable. Id. This Court also observed that the briefing had been genuinely adverse and featured briefing from amici. Id.

K.W. does not believe the case is moot, but if it is, review is similarly appropriate. This case involves the analogous situation of a Black

child removed from extended family and placed in a home far removed from his family and culture. Further, the trial court's actions must be considered in the context of a lengthy and problematic history of such removals. App. C. By granting review, this Court can and should clarify that relative and extended family preference is to be honored, and the profound need to do so where the child and family are Black. The circumstances in this case are troubling, and they are part of a larger pattern of fragmentation of Black families.

The briefing has been genuinely adverse; this includes amicus briefing submitted by five organizations. The amicus briefing also makes it clear that several concerns discussed in Z.J.G. relating to the treatment of Native American children also apply to Black children. App. C at 8-9.

As with the Z.J.G. decision, this Court should grant review.

E. CONCLUSION

For the reasons stated, this Court should grant review.

DATED this 9th day of December, 2020.

Respectfully submitted,

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APPENDIX A

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The Court of Appeals
of the
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CASE #: 81278-5-I

In re the Dependency of K.W., Petitioner v. DCYF, Respondent
King County Superior Court No. 16-7-01691-8 KNT

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on August 26, 2020, regarding Petitioner's motion for discretionary review:

K.W., who is seven years old and legally free, seeks discretionary review of a March 12, 2020 trial court order denying his motion for placement with relatives instead of licensed foster care by a family previously approved as a potentially adoptive placement. For the reasons discussed below, the motion for discretionary review is denied.

K.W. was born on February 26, 2013, and was living with a relative, Merrion Beaver, when the Department of Children, Youth, and Family initiated dependency proceedings in 2016. After K.W. had lived with Beaver for the majority of time of the dependency, he became legally free for adoption in March 2019. After Beaver and another family member, Barbara Hobson, who had assisted Beaver in caring for K.W., indicated that they were not able to commit to adopting him, the Department organized a panel process to select a licensed foster family as potential adoptive parents in November 2019. As a result of this process, two potential families were selected.

After a series of communications between a social worker and Beaver and K.W. on December 6, 2019, the Department removed K.W. from Beaver's care. The circumstances leading to the removal were hotly disputed by the parties over the course of later proceedings. The Department initially placed K.W. with one of the families considered by the panel process. When, shortly thereafter, that family decided not to adopt and asked to have K.W. placed elsewhere, K.W. again sought placement with Beaver or Hobson, who then stated that she was willing to adopt K.W. At a hearing on December 24, 2019, a superior court commissioner granted the Department authority to place K.W. in licensed care and/or to place K.W. with Hobson short of a completed home study based upon "at least preliminary work with Ms. Hobson to assure that it's a safe and healthy placement for" him. The Department placed K.W. with the second family selected by the panel process.

In February 2020, K.W. filed a motion for placement with Beaver or Hobson, both of whom were willing to be evaluated as adoptive placements. In support, K.W. provided extensive materials describing the benefits of relative placement and disputing claims raised by the Department and CASA regarding the particular circumstances of Beaver's and Hobson's homes, relationships, and past statements. K.W. also provided an independent home study of Beaver's home completed by a licensed social worker.

On March 12, 2020, the trial court denied K.W.'s motion for placement with Beaver or Hobson "at this time," authorizing the Department to place him with either one of them "for the purposes of adoption" after passing "an adoption home study" "conducted by DCYF."

K.W. seeks discretionary review of the March 12, 2020 order under RAP 2.3(b)(2). "Interlocutory review is disfavored." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591 (2010). "It is not the function of an appellate court to inject itself into the middle of a lawsuit and undertake to direct the trial judge in the conduct of the case." *Maybury v. City of Seattle*, 53 Wn.2d 716, 720, 336 P.2d 878 (1959). Discretionary review may be granted under RAP 2.3(b)(2) based on a

showing of “probable error” in a trial court decision that “substantially alters the status quo or substantially limits the freedom of a party to act.” Placement decisions in a dependency proceeding are reviewed for abuse of discretion. In re Dependency of A.C., 74 Wn. App. 271, 275, 873 P.2d 535 (1994).

As to probable error, K.W. contends that the trial court “paid lip service to K.W.’s well-being,” but ignored the critical priority of relative placement; erroneously “rejected Beaver’s home study” as including unidentified inaccurate information; and ignored K.W.’s ongoing trauma and expressed wishes. However, the hearing transcript does not support K.W.’s characterizations. On the contrary, the trial court stated that a preference for relative placement “is a good thing”; that K.W. “has a number of people who really care about him”; that there was “nothing wrong with” Beaver and Hobson not being “ready to commit to adoption” initially; that the outcome of the Department’s adoptive home studies “could very well” “suggest[] [K.W.] should go to one of [Beaver’s or Hobson’s] homes”; and that “delaying placement” with either Beaver or Hobson “doesn’t mean that [K.W.] won’t be placed in one of [their] homes.” Instead, because “in this particular case, [K.W.] is in a place where he’s been a couple of months and where he is doing well,” the trial court observed that a decision to move K.W. “because of familial relationships” before the adoptive home studies were complete would be “sacrificing” “stability” to “a chance that [K.W.] would have to move again.” The trial court repeated, “[M]y purpose is not to take [K.W.] away from his family. My purpose is to keep him stable so that it can be figured out whether he ultimately is going to go with family and be adopted by family.” Given the possibility of a change, the trial court determined that “the best thing for [K.W.] is to just stay where he is until” “all of the potential adoptive families can be looked at” and “then the decision can be made as to where [he] goes.”

Regarding Beaver’s private home study, the trial court acknowledged reviewing the home study, but also acknowledged that the Department “raised” “concerns” about the study including information that “was not completely accurate” and ordered the Department to complete home studies for both Beaver and Hobson. When counsel asked for clarification of what information was inaccurate, the trial court stated it would “not argue with” counsel and was “not saying that later on the Court won’t look at the home study you’ve already done and the Department’s home study and make a decision about something, but today I’m not moving [K.W.] with these moving parts.” In other words, the transcript reflects that the trial court refused to make findings as to any disputes regarding weight or persuasiveness of the private home study until the Department completed its own home study or studies. K.W. has not identified anything in the record that suggests otherwise.

Similarly, nothing in the record supports K.W.’s claim that the trial court overlooked the trauma K.W. experienced when the Department initially removed him from Beaver’s home in December 2019. Instead, the trial court was focused on the potential for additional trauma given the fact that his behavior and school performance had apparently stabilized over the two months or so before the March 12 hearing. K.W. does not dispute this or indicate anything in the record to suggest that his situation had worsened in some way immediately before the hearing.

In sum, the fact that the trial court was not persuaded by the materials submitted by K.W. that his placement should be changed immediately despite the concerns raised by the Department and the CASA does not establish that its decision to wait to order a change in placement until all potential adoptive home studies could be completed was probably an abuse of discretion.

As for the effects of the order at issue, the second consideration required in RAP 2.3(b)(2), K.W. claims that the trial court's order keeps him "isolated from his extended family, with resulting trauma," particularly in light of the continuing pandemic. In his reply, K.W. also argues that the Department cannot be trusted to produce an unbiased home study, especially in light of the institutional racism that has undoubtedly infected the Department historically and even particularly in this case. But, even assuming that institutional and systemic racism has infected the Department's processes generally and particularly in this case, I am not persuaded that the March 12, 2020 order substantially altered the status quo or substantially limited K.W.'s freedom to act in this case. Essentially, the trial court refused to change K.W.'s placement, which appeared to be sufficiently stable, without requiring the Department to engage in additional investigation. Going forward, K.W. would still have counsel and would be able to seek a change in placement based on the same or different evidence, arguments, or circumstances, none of which had been excluded or rejected by the trial court. Nothing in the March 12, 2020 order would prevent K.W. and/or Beaver and/or Hobson from challenging or disputing the sufficiency of the Department's ongoing investigation of potential adoptive placements. And, nothing in the briefing or record presented or referenced in connection with this motion suggests that additional proceedings before the trial court focusing on the sufficiency of the Department's actions following the March 12, 2020 order requiring the completion of additional home studies would be unproductive or futile. Under these circumstances, K.W. fails to establish circumstances justifying discretionary review under RAP 2.3(b)(2).

Accordingly, the motion for discretionary review is denied.

Please be advised a ruling by a Commissioner "is not subject to review by the Supreme Court." RAP 13.3(e)

Should counsel choose to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served... and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

LAM

cc. Hon. Annette Messitt

APPENDIX B

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Dependency of
K.W.,

STATE OF WASHINGTON,
DEPARTMENT OF CHILDREN,
YOUTH, AND FAMILIES,

Respondent,

v.

K.W.,

Petitioner.

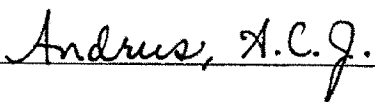
No. 81278-5-I

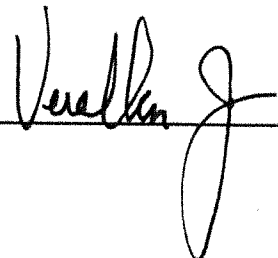
ORDER DENYING MOTION
TO MODIFY

Petitioner K.W. moves to modify the commissioner's August 26, 2020 ruling denying discretionary review of a placement order in a dependency proceeding. Respondent, the Department of Children, Youth and Families, has filed a response. The Court Appointed Special Advocate (CASA) also filed a response. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is hereby

ORDERED that the motion to modify is denied.







APPENDIX C

No. 81278-5-I

IN THE COURT OF THE APPEALS OF THE
STATE OF WASHINGTON, DIVISION ONE

In Re Dependency of K.W., a Minor Child,

State of Washington/Department of Children, Youth, and Families,
Respondent,

v.

K.W.,
Petitioner.

MEMORANDUM OF AMICI CURIAE WDA, NAACP-SEATTLE
KING COUNTY, SMITH LAW LLC, ACLU-WA, KOREMATSU
CENTER, AND THE MOCKINGBIRD SOCIETY IN SUPPORT OF
CHILD-PETITIONER'S MOTION FOR DISCRETIONARY REVIEW

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Dennis Ichikawa, Commissioner
The Honorable Annette Messitt, Judge

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I. IDENTITY AND INTEREST OF AMICI CURIAE

The identity and interests of Amici are set forth in the motion for leave to file amici curiae brief separately filed and that this Court granted.

II. INTRODUCTION

Forced family separation—of which the foster care system is the most recent iteration—is a relic of slavery, wherein the State used the courts to rip Black families apart and ignored their pleas of reunification.¹ Family separation is also a continuation of the devastating and genocidal legacy of colonization.² Historically, just as the missionary and settler purported to control Indigenous people to take their land, colonists (once the land was acquired) purported to control the bodies of people of African descent to extract the value of their labor, both the fruits thereof and the value of ownership of their bodies.³ Today, the State continues to seek to control the bodies of Black and Indigenous people and to remove their

¹ Holden, Vanessa M., *Slavery and America's Legacy of Family Separation*. African American Intellectual History Society (July 25, 2018)(<https://www.aaihs.org/slavery-and-americas-legacy-of-family-separation/>). Cf. Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families*, 1 Nw. J. L. & Soc. Pol'y. 303, 304-305 (2006) (<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1003&context=njlsp>).

² Kashyap, Monika Batra, *Unsettling Immigration Laws: Settler Colonialism and the U.S. Immigration Legal System*, 46 Fordham Urb. L. J. 548 (2019).

³ The Chronicle of Social Change, Children and Youth, Front and Center. *The Nation's First Family Separation Policy* (October 9, 2018) (<https://chronicleofsocialchange.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>).

autonomy in school systems, health systems, carceral systems, and the foster care system.⁴ Moreover, “[k]inship care is a viable component of family preservation, reunification and permanency for African American children[,]”⁵ while a governmental preference for a white nuclear family as a placement for a Black child raises serious questions about racial bias. This context is essential to consider in connection to the Department of Children, Youth, and Family’s (“DCYF”) actions in removing K.W., in spite of both his and the biological family’s pleas for reunification.

III. ISSUES OF AMICI CURIAE

This case raises important concerns about the preservation of families, particularly Black families, ensnared in the State’s family regulation system. The decision of the superior court constitutes “probable error” and “substantially alters the status quo,” RAP 2.3(b)(2), as the disruption of K.W.’s loving extended family placement in favor of white, two-parent licensed foster care placement has dismembered K.W.’s family and is plainly not in his best interest. The State’s actions here, even if consistent with its own policies and procedures, are informed by anti-

⁴ Holden, Vanessa M., *Slavery and America’s Legacy of Family Separation*. African American Intellectual History Society (July 25, 2018) (<https://www.aaihs.org/slavery-and-americas-legacy-of-family-separation/>).

⁵ Robert B. Hill, Ph.D., Zelma S. Smith, and Jacqueline Bailey Kidd, Kinship Care Position Paper, National Association of Black Social Workers (2002). (https://cdn.ymaws.com/www.nabsw.org/resource/collection/E1582D77-E4CD-4104-996A-D42D08F9CA7D/Kinship_Care_Position_Paper_Developers_and_Conveners.pdf.)

Black racial bias, and lead to the wrongful removal of Black children⁶ from their loving Black families.⁷

Amici provide additional arguments demonstrating: (1) the lower court's decision clearly satisfies the probable error standard under RAP 2.3(b)(2) because it is not consistent with Washington's statutory preference for children to remain within their extended family above all other types of out of home placements; and (2) the decision "substantially alters the status quo" under RAP 2.3(b)(2), because placement of K.W. into licensed care instead of with his loving Black family reflects anti-Black bias and constitutes an impermissible disregard for the life of this young Black child and his right to be raised within his own family.

IV. **ARGUMENT**

- A. The lower court's decision constitutes probable error under RAP 2.3(b)(2) because it violates Washington's statutory preference for children to remain within their extended family above all other types of out of home placements.

The Washington State Legislature has created a preference that children, who are removed from their parents, will be placed with their own relatives. RCW 13.34.130 (5) ("Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section

⁶ References in this brief to Black child or Black children includes all children, labeled and tracked by DCYF as "Black alone" or "Black and other races."

⁷ The references to Black family, Black relatives, and Black parents or caregivers refers to the racial group of the primary caregiver.

shall be given preference by the court.”). The department may only place a child with a person *not* related to the child when the court finds both that such placement is in the best interest of the child *and* that there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered. RCW 13.34.130 (3).

This dispositional statute, which governs where a child will live after a dependency finding has been entered, also requires the court to “consider the child's existing relationships and attachments when determining placement.” *Id.* These statutory protections are designed to be protective of the child and are consistent with social science research that shows that relative placements are safer, longer lasting, and more stable, than non-relative placements. Testa, Mark F., *The Quality of Permanence - Lasting or Binding - Subsidized Guardianship and Kinship Foster Care as Alternatives to Adoption*, 12 Va. J. Soc. Pol'y & L. 499 (2005); Marc Winokur et al., *Systematic review of kinship care effects on safety, permanency, and well-being outcomes*, 28.1 Research on Social Work Practice 19 (2018) (finding “children in kinship care experience better outcomes in regard to behavior problems, adaptive behaviors, psychiatric disorders, well-being, placement stability (placement settings, number of placements, and placement disruption), guardianship, and institutional

abuse than do children in foster care”). The statutory preference for relative caregivers aims to preserve the child’s well-being and benefits for children by prioritizing relative placements from the earliest point of a case. RCW 13.34.065(5)(b) (“If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered.”). When the court disregards these protective preferences for relative caregiving, the child is harmed.

Further, the preference for placement with relatives is empirically supported by the State’s own studies as well as by other sources. Relative and kinship care placements are more stable than other types of out-of-home placements. Christian M. Connell et al., *Changes in Placement among Children in Foster Care: A Longitudinal Study of Child and Case Influences*, 80 (3) Soc. Serv. Rev. 398-399 (2006); Children’s Administration, Department of Social & Health Services, State of Washington, *Annual Progress and Services Report 2018* 26 (2017).⁸ The trial court’s failure to apply the relative placement preference set forth in

⁸(<https://www.dcyf.wa.gov/sites/default/files/pdf/reports/APSR-2018.pdf>).

Chapter 13.34 RCW constitutes probable error and justifies discretionary review under RAP 2.3(b).

- B. The lower court's decision constitutes a substantial alteration of the status quo because separation of a Black child from his loving Black family causes devastating harm.

When the court removes a child from his home, the experience is profoundly traumatic for the child. Connell et al., *supra*, at 398-418. The negative impact affects that child's developmental trajectories and long-term well-being. Connell, et al., *supra*, at 398-399. A child's educational success is also negatively impacted by placement changes, and can result in behavioral problems in school, academic skill delays, and school failure. Connell, et al., *supra*, at 399; *see also* Bonnie T. Zima et al., *Behavior Problems, Academic Skill Delays and School Failure among School-Aged Children in Foster Care: Their Relationship to Placement Characteristics*, 9(1) J. Child Fam. Stud. 87-103 (2000). Moving dependent children multiple times has also been associated with socio-emotional harm and increased levels of mental health service use. Connell, et al., *supra*, at 398-399.

For Black children, family separation also erases their opportunity to experience unconditional love as members of their own families and acceptance in their cultural communities. It further undermines their opportunity to thrive in life through, in part, the development of healthy

and supported racial identity. In this racist society, the development of a healthy and supported racial identity is essential to a Black child's lifelong socio-emotional wellbeing. As a result, Black children experience compounded traumas, from which many do not recover.

Since being placed in licensed care, K.W. has not been able to see his family or participate in other events central to his Black identity. In addition, K.W, knowing that DCYF is aware of his desire to be with his family, and his family's desire to care for him, has been shown that his wants, needs, and best interest are not to be decided by him or his family but for the state to decide. He is learning from the State's mistreatment of him that he is not a full person, but an object to be removed and displaced, whenever the state deems appropriate. *See In Re Dependency of M.S.R.*, 174 Wn.2d 1, 20, 271 P.3d 234, 245 (2012)("[W]e conclude that under the Fourteenth Amendment to the United States Constitution, children have fundamental liberty interests at stake in termination of parental rights proceedings. These include a child's interest in being free from unreasonable risks of harm and a right to reasonable safety; in maintaining the integrity of the family relationships, including the child's parents, siblings, and other familiar relationships; and in not being returned to (or placed into) an abusive environment over which they have little voice or control."). K.W. has roots. K.W. does not need to be "saved." K.W.

should be able to be loved and supported by his family. *See Testa, supra*, at 499; Winokur, et al., *supra*, at 19-32. The overwhelming evidence of harm to K.W. demonstrates that the alteration of the status quo supports granting discretionary review.

- C. DCYF's meritless and ongoing rejection of K.W.'s extended family members compounds the harm to K.W. and strongly suggests anti-Black racial bias.

When it comes to how children are treated in Washington's foster care system, race matters. Miller, Marna. *Racial Disproportionality in Washington State's Child Welfare System*. Olympia, Washington: Washington State Institute for Public Policy, Document No. 08-06-3901, 7-9 (2008).⁹ Black and Indigenous children were more likely than white children to be referred to CPS; to be removed from their homes after CPS got involved in their family; and to remain in care for more than two (2) years.¹⁰ These same differences in treatment persist. Data Management and Reporting Section (DMRS), Children's Administration, Department of Social Health Services, Racial Indices Report 13 (2016). Black

⁹ (https://www.wsipp.wa.gov/ReportFile/1018/Wsipp_Racial-Disproportionality-in-Washington-States-Child-Welfare-System_Full-Report.pdf).

¹⁰ Found online at: https://www.dcyf.wa.gov/find-reports?field_report_types_value=Leg&field_category_reports_value=Race&field_year_value=All&combine=. The Washington State Racial Disproportionality Advisory Committee ("WSRDAC") recommended that a remediation plan be developed and pursued, and DCYF now files annual reports reporting progress toward implementing that remediation plan.

children are still referred at a higher rate and are more likely to be removed from their homes than white children. DMRS, *supra*, at 13. When removed from their homes, Black children are less likely than white children to be placed with their relatives.¹¹ DMRS, *supra*, at 13. Black children are more likely to be moved twice or more times in the first twelve (12) months in care, and to continue moving more often after two years in care than White children.¹² DMRS, *supra*, at 13. Black caregivers are also twice as likely to be referred to CPS for no good reason. *See* Miller, *supra*, at 7.

Here, DCYF has identified unfounded referrals to CPS, associating with Black people who have criminal convictions, and associating with formerly incarcerated Black people as reasons why his own Black family cannot care for K.W. All of these asserted reasons are associated with racial bias. *Cf.* GR 37 (h) (listing reasons presumptively invalid because associated with improper discrimination in jury selection). Therefore, the State's use of unfounded CPS referrals and association with Black people

¹¹ Black (93 percent) and multiracial Black (84 percent) children are far less likely than white (77 percent) children to be placed with their relatives. DMRS, *supra*, at 13.

¹² The extreme example of placement instability is DCYF's use of placement exception. "Placement exceptions" are the use of hotels and Department offices as placements for dependent children placed in the custody of the DCYF, and are tracked annually by the Office of Family and Children Ombuds ("OFCO"). Dowd, Patrick, Office of Family and Children's Ombuds, 2017 Annual Report 47 (2017). Nearly half of the children in foster care who experienced placement exceptions were Black, even though they only accounted for approximately a quarter of all Washington's dependent children in out of home placement. Dowd, *supra*, at 52.

who have a criminal record, as a basis for refusing placement, particularly when there is a stark lack of evidence of harm to this child from the family members seeking placement, is not a legitimate reason for removing this child from his family and placing him with strangers. Rather, using a Black parent or caregiver's unfounded¹³ CPS referral history and associations with Black people, who have either been convicted or been to prison can rightly be viewed as raising a strong inference of racial bias. See Vivek Sankaran, *With Child Welfare, Racism is Hiding in the Discretion*, Chronicle of Social Change (June 21, 2020) (noting in foster care system "when such wide discretion exists, we know that both implicit and explicit bias can significantly affect the decisions that are made").¹⁴

V. CONCLUSION

For the reasons stated above, amici respectfully support K.W.'s request that discretionary review be granted.

Respectfully submitted this 8th day of July 2020.

Electronically signed by Amici curiae listed below

| | |
|--|---|
| D'Adre Cunningham WSBN 32207 Staff Attorney Washington Defender Ass'n | Nancy Talner, WSBN 11196 Antoinette M. Davis, WSBN 29821 Kendrick Washington, IL. BN 6315824 |
|--|---|

¹³ "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur. RCW 26.44.020(28).

¹⁴ Available at: <https://chronicleofsocialchange.org/child-welfare-2/with-child-welfare-racism-is-hiding-in-the-discretion/44616>.

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|---|---|
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| Sade Smith, WSNB 44867 Smith Law LLC PO Box 2767 Renton, WA 98056-0767 Phone: (206) 715-4248 sade@thesmithlaw.com NAACP Seattle King County P.O. Box 22148 Seattle, WA 98112 Phone: (206) 324-6600 | Robert S. Chang, WSNB 44083 Jessica Levin, WSNB 40837 Melissa R. Lee, WSNB 38808 Fred T. Korematsu Center for Law & Equality Ronald A. Peterson Law Clinic 1112 E. Columbia Street Seattle, WA 98122 Phone (206) 398-4025 changro@seattleu.edu levinje@seattleu.edu leeme@seattleu.edu |
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on July 8, 2020, I caused a true and correct copy of the Amici curiae memorandum in support of Petitioner of WDA, NAACP Seattle-King County, Smith Law LLC, ACLU-WA, the Korematsu Center, and The Mockingbird Society, to be served as follows:

| | |
|---|--|
| Attorney for Petitioner: Jennifer Winkler Nielsen Koch, PLLC 1908 East Madison Street Seattle, WA 98122 Ph: 206-623-2373 WinklerJ@nwattorney.net | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By E-mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Messenger |
| Attorney for Respondent: Patricia Allen Assistant Attorney General Office of the Attorney General 800 Fifth Ave., #2000 Seattle, WA, 98104 Phone: (206) 464-7045 Patricia.Allen@atg.wa.gov | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By E-mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Messenger |
| Attorney for CASA: Jennie Mayberry Cowan 401 4th Avenue N, Ste. 3081 Kent, WA, 98032 Phone: (206) 477-2768 jcowan@kingcounty.gov | <input type="checkbox"/> By U.S. Mail <input checked="" type="checkbox"/> By E-mail <input type="checkbox"/> By Facsimile <input type="checkbox"/> By Messenger |

DATED 8 July 2020.

Electronically Signed D'Adre Cunningham

WASHINGTON DEFENDER ASSOCIATION

July 08, 2020 - 4:11 PM

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APPENDIX D

In the Superior Court of the State of Washington

In and for the County of King

Juvenile Department

KING COUNTY

SUPERIOR COURT CLERK

E-FILED

In re the dependency of

CASE #: J6-7-01691-8 SEA

K[REDACTED] W[REDACTED]

)

)

Declaration of Barbara Hobson

)

re: Visits and Home Study

)

DOB: [REDACTED]/[REDACTED]/2013

)

)

a minor child.

)

[Clerk's action required]

)

To: Clerk of the Court

And to: Office of the Attorney General

And to: DCYF Caseworker

And to: All parties and their counsel of Record

1. My name is Barbara Hobson. I am 52 years old and I have been a King County Metro Transit employee for nearly a decade. I am also a part time certified home care aide through the Department of Health since 2018. I am a Veteran of the United States Army and received an honorable discharge, as well as a Protective Payee helping the Social Security Administration for the past 15 years with individuals to manage their finances.
2. More recently, I was chosen as a trustee for the Board of Directors of a non profit agency, Best Life Support Services, Alleviating Homelessness.
3. In 2013, I passed a home study along with my son, DeJuan Lofton, conducted out of the Lynnwood, WA(DCYF) office to have my grandson transferred from Arizona into my household. I request a copy of my previous home study on January 30, 2020 to Sharon Daly at DCYF Public Disclosure. I was told it will take up to 120 days to send the home study or July 20, 2020. The order number is JD510622. This was an ICPC home study that was entered at the Lynnwood Office on December 17, 2013. It was completed out of the Lynnwood Office by Laura Bernatek (MSW). I am attaching a copy of my public disclosure request. I am attaching a copy of the email I received from the DCYF Public Disclosure Department (Exhibit A)
4. I attended court for K[REDACTED]'s motion to be placed with a relative on December 24, 2019. At that hearing, the Judge ordered, among other things, that a Home study be expedited for me.
5. I immediately went to the Graham Street DCYF Office on the 24th of December, 2019, and I completed the application for the home study intake application. It was something like 14 or 15

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pages.

6. On January 6, 2020, I had a meeting with Suzanne Large and Marissa Sallee. I had been requesting earlier meetings, but they would not meet me until the 6th of January, 2020. Merrion Beaver was with me. It was about an 45 minutes to an hour meeting. They asked me about various things, and I responded to their questions. One of the issues was my care for Tionna Simpson. That allegation was unfounded.
7. At that January 6, 2020 meeting, Suzanne Large stated that I could not pass a home study. This was said in front of Merrion Beaver.
8. On January 31, 2020, I had my first appointment with the home study licenser, Katherine Allen. The meeting was about one hour. She did an inspection of my house. She said I was lacking 2 or 3 things to pass. She said I needed to get my hot water tank turned down to 120 degrees. I needed to move my cleaning products from under the sink to the top of the cabinet. I needed a carbon monoxide detector and a fire escape later. She provider me the carbon monoxide detector later, and she would order the ladder. She did not have any negative comments. She said that I could get payments if I could get licensed as a foster care licensed provider. Because of her suggestion, I decided to complete the process for becoming a licensed foster care provider.
9. On January 31, 2020, during this meeting, I told Ms. Allen that Supervisor Suzanne Large had said that I would not pass a home study. Ms. Allen "you have already passed." She also said that my name was being floated about her office and I was being talked about. Lavondalynn Turner was present at this meeting, and she heard these statements.
10. I completed the training that I was required to do within 2 weeks. I completed my CPR, first aid, and bloodborne pathogens training on February 12, 2020. I completed the 24 hours of online foster care training on February 12, 2020. This included a coaching session with El-Freda Stephenson on February 12, 2020. I am attaching copies of my completion certificates.
11. On February 14, 2020, I had my second appointment with Katherine Allen. At that appointment, she asked me a series of questions about my family. She asked me about the meeting I had on January 6, 2020 with Suzanne Large and Marissa Sallee, and I provided her some documents. It was about an hour meeting. She also asked me general background information. She seemed pleasant and straight forward. She made no indication that I would not pass. She did not ask me to do anything else. She stated she was putting in the orders for the different items.
12. At the meeting on the 14th, I don't recall any questions regarding me allowing unauthorized contact between Keyon and birth parents. I have never allowed unauthorized contact between K[REDACTED] and his birth parents. I have repeatedly stated this, and the statements that I have allowed this are false. There is no substantiation or founded allegations or authenticated reports to justify this claim. It is absolutely false.

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13. On February 26, 2020, I had my final appointment with Ms. Allen. The purpose of the meeting was to verify that the previous items she had requested were completed, such as the hot water heaters and the cleaning products. She was there about 5 minutes, and confirmed everything was okay. I still had received the fire escape ladder or the carbon monoxide detector. I later picked up those items in the later part of March.
14. I had completed everything that I had asked to by February 26, 2020, although I did not pick up the fire escape ladder and the carbon monoxide until March 12, 2020.
15. After that time, there really was not any communication about my home study for about a month.
16. On March 27, 2020, I reached out to Ms. Allen about the home study. She responded that day that she was almost finished with the draft. I am attaching a copy of the email I received. This about 3 months after I did my initial intake application. (Exhibit C)
17. On April 17, 2020, I received the home study draft from Ms. Allen by email instructing me to answer questions. The draft home study includes information that I never stated to her. I never stated to her that I was involved romantically with Larry Nicholson. That is a false statement. Larry Nicholson has submitted a declaration that we are not romantically involved. I am attaching a copy of his declaration to my declaration. I gave a copy of Larry Nicholson's Declaration to her. (Exhibit D)
18. The draft also failed to include the police information that I provided that refuted and disproved the allegations from June 8, 2018. There are no founded allegations, and the claims of DCYF are clearly refuted by the police report. The home study draft did not include the clear and important information I provided to them. I addressed this fully in my earlier declarations, in particular subdocument 144 in the court file.
19. The draft home study says that I expressed a past belief that children should be returned to the birth parents. I do believe that children should be returned to birth parents if court ordered, which is what I said. I think that is the law as well. I have clearly stated that I will not allow K [REDACTED] to see his birth parents unless it is court ordered.
20. The allegation regarding Tionna is false, and it was unfounded. I am attaching a copy of Tionna Simpson's letter. It is not appropriate to consider unfounded allegations as a basis for denying a home study. (Exhibit J)
21. There are no founded allegations of unsafe people being in my home. I do not allow unsafe people to have access to children in my care.
22. I am attaching the draft home study from Katherine Allen that I received on April 17, 2020. I answered her questions within a couple hours of receiving the draft home study. (Exhibit K)
23. On April 28, 2020, I received an email from Katherine Allen saying she was still making some changes to the draft home study. I am attaching a copy of the email. (Exhibit E)

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K [REDACTED]

24. On May 5, 2020, I received a phone call from Ms. Allen stating that my home study was denied and if I was to appeal the denial, I could possibly lose my home care aide certification. I felt like I was being threatened with losing my home care job if I challenged the denial. She said it had to do with Tionna Simpson.
25. On May 8, 2020, I received an email from her about the home study and how I appeal the decision. I am attaching copies of the emails with Ms. Allen's responses. She said it could take several weeks to a few months to get a denial letter once the home study is denied. (Exhibit F and G)
26. I have still not received a final denied home study from DCYF.
27. On May 26, 2020, I received another set of questions from Ms. Allen. I told her that if the following questions did not make a difference in an approval, there was no need for me to continue. I am not going to continue to answer questions that should have been addressed throughout the process and furthermore does not change a denial. I have been waiting since May 5, 2020 to receive the final denied home study. (Exhibit G and I)
28. I am requesting a private home study to be authorized by the court. I am requesting Erin McKinney, but I would be willing to use another private home study person
29. Based on the length of the process and the increasingly troubling interactions I have had with the DCYF staff, I am forced to conclude that the home study process is being influenced by DCYF's attempts to prevent me from being a placement for K[REDACTED]. DCYF has struggled for five months to find reasons to deny the home study, and I still can't get a straight answer from them even though I have been done with the process since February 26, 2020.
30. I have not had any contact with my nephew K[REDACTED] since December 24, 2019. I have not even had any telephone contact or letters or any contact whatsoever.
31. I would like to have in person and phone visits with Keyon.

DATED this 15th day of June 2020.

Location signed Seattle Washington.

Barbara Hobson
Barbara Hobson

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HSS

NIELSEN KOCH P.L.L.C.

December 09, 2020 - 1:52 PM

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